

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

CHAPTER 13 CASE

Joel O. Solomonson,

Debtor.

BKY File No. 04-43248

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**OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN**

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To: The parties as specified in Fed R. Bank P. 3015 and Local Rule 3020-1(b).

1. Hanson Building Materials, Inc. ("Hanson") respectfully submits this Objection to Joel O. Solomonson's ("Debtor") Chapter 13 Plan ("Plan") ("Objection). Confirmation should be denied. The Plan is not feasible, it does not satisfy the "best interests" requirement, it provides disparate treatment for similarly situated creditors and it does not satisfy the "best efforts" test.

2. The Debtor filed his voluntary petition on June 8, 2004 ("Filing Date"), and his Plan and schedules were filed on June 22, 2004. The case is pending in this Court. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334, Fed.R.Bankr.P. 5005, and Local Rule 1070-1. This hearing on the Objection is a core proceeding.

3. This motion arises under 11 U.S.C. §§ 1322 and 1325 and Fed.R.Bankr.P. 3015. This motion is filed under Bankruptcy Rule 9013 and Local Rule 3007-1.

4. Hanson provided material to the Debtor for use in the Debtor's business.<sup>1</sup> The Debtor was paid by the homeowner for such material, and the Debtor did not pay Hanson. Pursuant to Minnesota Statute § 514.02, the Debtor committed theft.

5. The Plan is not feasible. For the Court to confirm the Plan, the Court must find that the Debtor "will be able to make all payments under the plan and to comply with the plan."

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<sup>1</sup> For some reason, the Debtor lists this debt at "consumer debt."

See 11 U.S.C. § 1325(6). The Plan payments are based on an annual gross income of \$48,000 from wages, salary and commissions. See Debtor's Schedule I, Exhibit A.

In the Financial Review of the Debtor's Business, however, the Debtor essentially states that he averaged \$2143.66 in the twelve months prior to the Filing Date. See Exhibit B. Furthermore, in the Debtor's statement of financial affairs, the Debtor states that his 2003 income was \$26,440 and his 2002 income was \$37,367, both of which are far less than that \$48,000 relied upon for the Plan. Furthermore, the Plan provides a \$550 increase in monthly payments beginning in month 25, yet no basis for such an increase is provided in the Debtor's Schedule I. The information provided by the Debtor does not indicate an ability to "make all payments under the plan," and confirmation should be denied.

6. The Plan does not satisfy the "best interests requirement." For the Court to confirm the Plan, the Court must find that "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." See 11 U.S.C. § 1325(4). Here, the Plan proposes to pay most unsecured creditors, except for U.S. Bank, their pro-rata share of only \$1,725. U.S. Bank is to receive The Debtor's schedule B, however, indicates non-exempt property, which would be liquidated in a Chapter 7, in the amount of \$5,900. See Schedule B. On its face, the Plan is not in [most] unsecured creditors' best interests.

7. The plan treats unsecured creditors differently. The plan must comply with the provisions of chapter 13 and with the other applicable provisions title 11. See 11 U.S.C. § 1325(a)(1). A Chapter 13 plan "shall... provide the same treatment for each claim within a particular class." See 11 U.S.C. § 1322(a)(3). While a plan may provide different treatment for

unsecured consumer debt for which the debtor is a co-signor with another individual, a plan may not unfairly discriminate. See 11 U.S.C. § 1322(b)(1).

Here, the Plan provides for 100% payment of the U.S. Bank debt while providing for payment of 7.25% of all other unsecured claims. First, such treatment unfairly discriminates against every unsecured creditor except for U.S. Bank. Second, if the Court is inclined to approve such treatment, it should at least require the Debtor to prove up his apparent claim that the U.S. Bank debt is consumer debt, and not debt incurred for his business.

8. Hanson incorporates any other objections to confirmation filed with the Court and requests the Court to deny confirmation.

**MANSFIELD TANICK & COHEN, P.A.**

Dated: August 19, 2004

By /e/ Jamie R. Pierce  
Jamie R. Pierce (305054)  
1700 Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402  
Telephone: 612-339-4295

**ATTORNEYS FOR HANSON BUILDING  
MATERIALS**

#### VERIFICATION

I, Jamie R. Pierce, Movant named in the foregoing objection to confirmation of Debtor's chapter 13 plan, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 19, 2004

/e/ Jamie R. Pierce  
Jamie R. Pierce

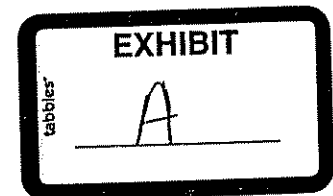
In re Joel O. Solomonson / Debtor Case No. 04-43248 RJK  
(if known)

## SCHEDULE I-CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed

Debtor's Marital Status: <b>Single</b>	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP	AGE
EMPLOYMENT:	DEBTOR	SPOUSE
Occupation	<b>Siding Installation Age: 31</b>	
Name of Employer	<b>Self-employed</b>	
How Long Employed	<b>na</b>	
Address of Employer	<b>na</b>	
	<b>na na na</b>	
Income: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current Monthly gross wages, salary, and commissions (pro rate if not paid monthly)	\$ 4,000.00	\$ 0.00
Estimated Monthly Overtime	\$ 0.00	\$ 0.00
SUBTOTAL	\$ 4,000.00	\$ 0.00
LESS PAYROLL DEDUCTIONS		
a Payroll Taxes and Social Security	\$ 458.00	\$ 0.00
b Insurance	\$ 0.00	\$ 0.00
c Union Dues	\$ 0.00	\$ 0.00
d Other (Specify):	\$ 0.00	\$ 0.00
SUBTOTAL OF PAYROLL DEDUCTIONS	\$ 458.00	\$ 0.00
TOTAL NET MONTHLY TAKE HOME PAY	\$ 3,542.00	\$ 0.00
Regular income from operation of business or profession or farm (attach detailed statement)	\$ 0.00	\$ 0.00
Income from Real Property	\$ 0.00	\$ 0.00
Interest and dividends	\$ 0.00	\$ 0.00
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ 0.00	\$ 0.00
Social Security or other government assistance		
Specify:	\$ 0.00	\$ 0.00
Pension or retirement income	\$ 0.00	\$ 0.00
Other monthly income		
Specify: <b>Rental Income</b>	\$ 700.00	\$ 0.00
TOTAL MONTHLY INCOME	\$ 4,242.00	\$ 0.00
TOTAL COMBINED MONTHLY INCOME \$	<u>4,242.00</u>	
(Report also on Summary of Schedules)		

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:



## Financial Review of the Debtor's Business

In re

Joel O. Solomonson

Case No. 04-43248 RJK  
Chapter 13

### Business Income and Expenses Financial Review of Debtor's Business

Type of business Remodeling

Business name Elite Exteriors

#### PART A-GROSS BUSINESS INCOME FOR PREVIOUS 12 MONTHS:

1. Gross Income for 12 Months Prior to filing \$ 29,000.00

#### PART B-ESTIMATED AVERAGE FUTURE GROSS MONTHLY INCOME:

2. Gross Monthly Income \$ 4,000.00

#### PART C-ESTIMATED AVERAGE FUTURE MONTHLY EXPENSES:

3. Payroll (paid to others)	\$	
4. Payroll taxes	\$	
5. Unemployment Taxes	\$	
6. Worker's Compensation	\$	<u>116.00</u>
7. Employee Benefits (e.g., pension, medical)	\$	
8. Other taxes	\$	
9. Inventory Purchases (including raw materials)	\$	
10. Purchase of Feed/Fertilizer/Seed/Spray	\$	
11. Rent	\$	
12. Utilities	\$	<u>25.00</u>
13. Office expenses and supplies	\$	<u>42.00</u>
14. Repairs and maintenance	\$	<u>15.00</u>
15. Vehicle expenses	\$	<u>850.00</u>
16. Travel and entertainment	\$	
17. Advertising and promotion	\$	<u>5.00</u>
18. Equipment Rental and Leases	\$	<u>138.00</u>
19. Legal/Accounting/Other professional fees	\$	<u>34.00</u>
20. Insurance	\$	<u>159.00</u>
21. Payment to be made directly by debtor to secured creditors for pre-petition business debt(specify)	\$	
22. Other (describe)	\$	
23. Total Monthly Expenses	\$	<u>1,384.00</u>

#### PART D - ESTIMATED AVERAGE NET MONTHLY INCOME

24. Average Net Monthly Income (subtract line 23 from line 2) \$ 2,616.00

Verification. I, Joel O. Solomonson, the debtor(s) named in the foregoing financial review form, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on 05/28/2004

Signed: Joel O. Solomonson

Signed: \_\_\_\_\_

EXHIBIT

tabbles

B

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Joel O. Solomonson,

CHAPTER 13 CASE

Debtors.

BKY File No.: 04-43248

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**PROOF OF SERVICE**

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Amy E. Kulbeik states that she is an employee of Mansfield Tanick & Cohen, P.A., and in the course of said employment, on the date indicated below, she served the following:

- Objection to Confirmation of Debtor's Chapter 13 Plan; and
- Order Denying Confirmation of Debtor's Chapter 13 Plan.

on:

Joel O. Solomonson  
1845 209<sup>th</sup> Avenue N.E.  
East Bethel, MN 55011

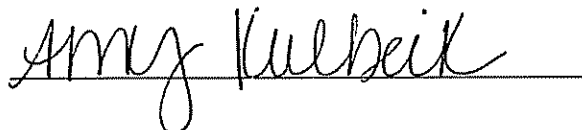
Jasmine Z. Keller  
12 South 6<sup>th</sup> Street  
Suite 310  
Minneapolis, MN 55402

Robert J. Everhart  
P.O. Box 120534  
New Brighton, MN 55112

Office of the U.S. Trustee  
300 South Fourth Street  
1015 U.S. Courthouse  
Minneapolis, MN 55415

by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail; and that she certifies the foregoing under penalty of perjury.

Dated: August 19, 2004  
#355857.1



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

CHAPTER 13 CASE

Joel O. Solomonson,

Debtor.

BKY File No. 04-43248

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**ORDER DENYING CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN**

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This matter came before the Court on Hanson Building Materials, Inc.'s Objection to Confirmation of Debtor's Chapter 13 Plan ("Objection"). Appearances were as noted on the record. Based upon the Objection, Court, arguments of counsel and the Court being fully advised of the premises,

IT IS HEREBY ORDERED

1. The Objection is sustained.
2. Confirmation of the Debtor's Chapter 13 Plan filed with the Court on June 22, 2004, is denied.

Dated: \_\_\_\_\_, 2004.

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The Honorable Nancy C. Dreher  
Judge of Bankruptcy Court